

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- - - - -X
UNITED STATES OF AMERICA 18-CR-6094(G)

vs.
XAVIER TORRES, Rochester, New York
Defendant. October 1, 2021
3:17 p.m.
- - - - -X

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE FRANK P. GERACI, JR.
UNITED STATES DISTRICT JUDGE

JAMES P. KENNEDY, JR., ESQ.
United States Attorney
BY: ROBERT A. MARANGOLA, ESQ.
CASSIE M. KOCHER, ESQ.
Assistant United States Attorneys
500 Federal Building
Rochester, New York 14614
Appearing on behalf of the United States

MAURICE J. VERRILLO, ESQ.
3300 Monroe Avenue
Suite 301
Rochester, New York 14618
Appearing on behalf of the Defendant

COURT REPORTER: Christi A. Macri, FAPR-RMR-CRR-CSR(NY/CA)
Christimacri50@gmail.com
Kenneth B. Keating Federal Building
100 State Street, Room 2640
Rochester, New York 14614

P R O C E E D I N G S

* * *

(**WHEREUPON**, the defendant is present).

THE CLERK: This is 18-CR-6094, U.S. vs. Xavier
Torres.

Rob Marangola and Cassie Kocher are here for the
Government.

Maurice Verrillo is here for defendant.

Mr. Torres appears today for argument on an
in limine motion by defendant.

THE COURT: Good afternoon. Are you Xavier Torres?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Yes. This matter's on for a
motion *in limine* filed by the defense, specifically requesting
that the Court order that certain acts subsequent to June 2nd,
2016, be precluded from the Government entering evidence on
those certain acts.

Did you want to be heard?

MR. VERRILLO: Yes, Judge. Judge, I did file a
motion to exclude under Federal Rule of Evidence 401 and 403.
I would note that Mr. Torres is a long-term resident of
Buffalo. He did reside in Rochester on Burbank Street in
2015, approximately March of '15 to November.

The motion in paragraph 6 refers to various
multiple events. Mr. Torres did not participate in --

1 subsequent to his residency going back to Buffalo.

2 And I think the evidence will show that Mr. Torres
3 did not participate in any of these events, and we would
4 submit it's not relevant in this case, in this trial.

03:18:52PM 5 The subsequent acts have no relevance to what
6 Mr. Torres is alleged to have done. I would submit that the
7 additional allegations or the additional testimony will be
8 burdensome, a waste of the Court's time, confusing,
9 misleading, and prejudicial since my client is not accused of
03:19:10PM 10 being involved in these various acts. And, if I possible,
11 relevance would be substantially outweighed by prejudice to
12 him.

13 So I'm making the Court aware of these issues
14 before the trial. I'm asking the Court to preclude or
03:19:22PM 15 restrict these subsequent acts in advance of trial. Thank
16 you.

17 **THE COURT:** Just for the record, the specific acts
18 that the defense is asking to preclude are controlled buys on
19 June 2nd, June 3rd, June 6th of 2016; controlled buys
03:19:47PM 20 September 21st, 2017; November 20th, 2017; a seizure at 16
21 LaForce Street July 31st, 2016; 54 Miller Street December 8th,
22 2016; seizure at 4 Ritz Street January 29th, 2018; seizure at
23 292 Barrington Street January 29th, 2018; seizure at 15
24 Burbank Street on January 29th, 2018; and a seizure at 820
03:20:28PM 25 East Main Street, apartment 14 on January 29th, 2018.

1 Mr. Marangola, do you want to respond?

2 **MR. MARANGOLA:** Judge, I think I outlined our
3 position in our papers, but essentially the -- once the
4 defendant is proven to be a participant in the conspiracy, all
03:20:48PM 5 evidence of the conspiracy is relevant because his liability
6 under *Pinkerton* and under the law extends to acts committed by
7 his co-conspirators in furtherance of the -- in furtherance of
8 the conspiracy.

9 So even though they're crimes committed, whether
03:21:06PM 10 he's there or not, he's still liable for and are still
11 admissible to prove the existence of the conspiracy, which is
12 the main charge in the case.

13 So it will also -- even if he's not there at a
14 particular event, it will also complete the narrative as to
03:21:23PM 15 how these witnesses came to be arrested and the circumstances
16 under which they became cooperating witnesses.

17 So because it will complete the narrative in terms
18 of these witnesses explaining how they came to be here as well
19 as provide further evidence of the conspiracy that the
03:21:40PM 20 defendant's membership in is presumed to continue unless and
21 until he establishes his withdrawal from that conspiracy, I
22 would ask that motion be denied.

23 **THE COURT:** Okay. The indictment does list the
24 period of the conspiracy from 2015 through on or about
03:21:59PM 25 January 29th, 2018.

1 Mr. Verrillo, you indicated that your client left
2 town at a certain time. When was that?

3 **MR. VERRILLO:** Roughly November of '15. And then
4 he's accused of being here -- being on Burbank Street I think
03:22:17PM 5 on February 6th of '16. He was arrested there on Burbank
6 Street.

7 Then there's an allegation of the shooting in June
8 of '16. That was in Buffalo though, that was not in
9 Rochester.

03:22:30PM 10 **THE COURT:** Okay. And I don't see anything in here
11 alleging that your client withdrew from the conspiracy.

12 Are you arguing that?

13 **MR. VERRILLO:** He would submit he wasn't involved in
14 a conspiracy, number one.

03:22:45PM 15 But, number two, that his conduct -- he didn't have
16 any contact with any of these people except for -- I mean, the
17 defendant, basically from November of '15 on. He was not
18 having contact with these people is our position.

19 **THE COURT:** Sure, I understand your position, but
03:22:59PM 20 there's no affirmative act or statement by your client
21 withdrawing from this conspiracy; is that correct?

22 He said he wasn't involved at all?

23 **MR. VERRILLO:** Right, yeah, yeah.

24 **THE COURT:** All right. Well, the motion *in limine*
03:23:13PM 25 is denied. It's clear that the conspiracy period alleged in

1 the indictment is from 2015 through on or about January 29th,
2 2018. The acts that the defense asked to be precluded were
3 obviously within that period of time of the conspiracy. I
4 think June 2nd, 2016 through the January 29th, 2018 period.

03:23:37PM 5 There are certain acts that the defense has asked
6 to be precluded. Obviously as long as they were during the
7 conspiracy, in furtherance of the conspiracy -- part of the
8 conspiracy, the defendant -- if the jury finds that he was a
9 co-conspirator -- would be liable for those acts even if he
03:23:55PM 10 didn't participate in those particular acts. Therefore, the
11 motion *in limine* is in all respects denied.

12 The other issue -- I did send a schedule, a trial
13 schedule to all counsel with specific times when we'll be
14 engaged in this particular trial. The first day, October
03:24:21PM 15 18th, I made it for a full day. We'll bring in panels of 25
16 at different times through that day and try to secure a jury
17 of -- I don't know if we talked about this, but I think we're
18 going to try to have four alternates as well in this trial
19 since it will be a three to four week trial.

03:24:40PM 20 Mr. Marangola, does that make sense?

21 **MR. MARANGOLA:** Sure.

22 **THE COURT:** Mr. Verrillo?

23 **MR. VERRILLO:** I'm sorry?

24 **THE COURT:** 16 jurors, four alternate jurors.

03:24:46PM 25 **MR. VERRILLO:** Yes, Judge.

3 Mr. Verrillo did indicate that Tuesday,
4 November 9th could be a problem for him.

8 MR. VERRILLO: Monday, yes.

25

CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I certify that these original notes are a true and correct record of proceedings in the United States District Court for the Western District of New York before the Honorable Frank P. Geraci, Jr. on October 1, 2021.

S/ Christi A. Macri

Christi A. Macri, FAPR-RMR-CRR-CSR(CA/NY)
Official Court Reporter